IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 899 OF 2004

IN

SUMMARY SUIT NO. 3149 OF 2004

Lilavati Kirtilal
Mehta Medical Trust & Ors. .. Plaintiffs.

vs.

Dr. Anil Kumar & Anr. .. Defendants.

Mr. Chetan Kapadia a/w Khokawalla a/w Ishwar Nankani i/by Nankani & Asso. for plaintiffs.

Mr. Sanjay Jain i/by Parab Kuhad & Asso. for defendants.

CORAM : S.U. KAMDAR, J.

DATE : 4th OCTOBER, 2005.

P.C.:

1. The present suit is filed for recovery of Rs. 3,91,950/- with further interest at the rate of 18% per annum on Rs. 3,76,152/- from the date of the filing of the suit till payment and/or realisation. The plaintiff in the present case is a trust who is running a hospital known as Lilavati Hospital. The patient known as Dr. Amarchand was

admitted in the hospital on 20.8.2001 under the care of a doctor known as Dr.Jagannath. The patient was in the hospital right upto 10.10.2001 when he expired. The plaintiff has relied upon an admission form which is Exhibit A at page 17 in which the defendant who is the son of the said deceased Dr. Amarchand agreed to make payment of the necessary charges. From time to time invoices are issued towards hospitalisation charges of the said deceased patient and that the amount under the said invoices comes to Rs. 3,80,275/-.

2. The patient expired on 10.10.2001. The body was delivered in view of the assurance given by the defendant on 10.10.2001 that he will make payment of the necessary amount. He has not made payment in spite of the said letter dated 10.10.2001. The defendant who is the doctor is denying his liability to pay hospital bill for treatment rendered to his father who was also a doctor. The defences raised in the present case are four-fold. First contention raised is that the defendant is not liable to make payment because of the negligence on the part of the hospital authorities . In respect of the said contention large correspondence has been produced with the affidavit in reply to the present suit. I am of the opinion that such claim of negligence can not be awarded unless the same is proved and such claim also can not be taken into consideration for

withholding the hospital bill of the patient. I am of the opinion that remedy of the defendant is to file his own suit by adopting appropriate legal proceedings. The case of negligence cannot be accepted merely by claiming negligence. In the present case the claim is for the sums which have become due and payable under various hospital bills which are issued to the defendant for the treatment of his father. In respect of the said hospital bills there is no serious dispute. The second contention raised is that the deceased was kept in the hospital and he died only because of the negligence of the doctor who had given treatment to the deceased and in view thereof, he is not liable to make payment subsequent to the period 26.8.2001. Even the said defence is without any merit. If the defendant himself is a doctor and if he wanted to move the patient from the hospital it was always permissible and available for him to do so. He having not done so, cannot escape his liability to pay all hospital bills for the subsequent period after 26.8.2001. The third contention raised is that the suit under Order 37 rule 2 on the admission form which is Exhibit A to the plaint and the invoice summary which is Exhibit C cannot lie. I am of the opinion that the admission form with the invoices which are issued from time to time by the plaintiff and a summary of which is produced at Exhibit C constitute written contract to make

payment. In that view of the matter, I am of the view that the suit is maintainable under Order 37 rule 2 CPC. The last contention is that the suit is barred by law of limitation. The said contention is also required to be rejected for the simple reason that the patient was in the hospital upto 10.10.2001 and thus the entire amount became crystalised and became due and payable by the defendant to the hospital only on 10.10.2001. Suit is filed on 8.10. 2004. Thus, the suit is within limitation. However, with a view to give an opportunity to the defendants to defend the suit, I direct the defendants to deposit Rs. 3,75,000/- in this Court within a period of four weeks failing which the plaintiff will be entitled to the decree. The amount if so deposited, the Prothonotary and Senior Master is directed to deposit the same in a fixed deposit with any nationalised bank initially for a period of one year and renew the same from time to time till further orders from this Court.

3. Suit transferred to the list of Commercial Causes. Written Statement or points of defence to be filed four weeks from the date of deposit. Affidavits list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on Board of the learned Judge taking Commercial Causes.